

Remarks:

These remarks are responsive to the Office action dated September 7, 2007. Prior to entry of this response, claims 1-14, 19, 21 and 32-39 remained pending in the application.

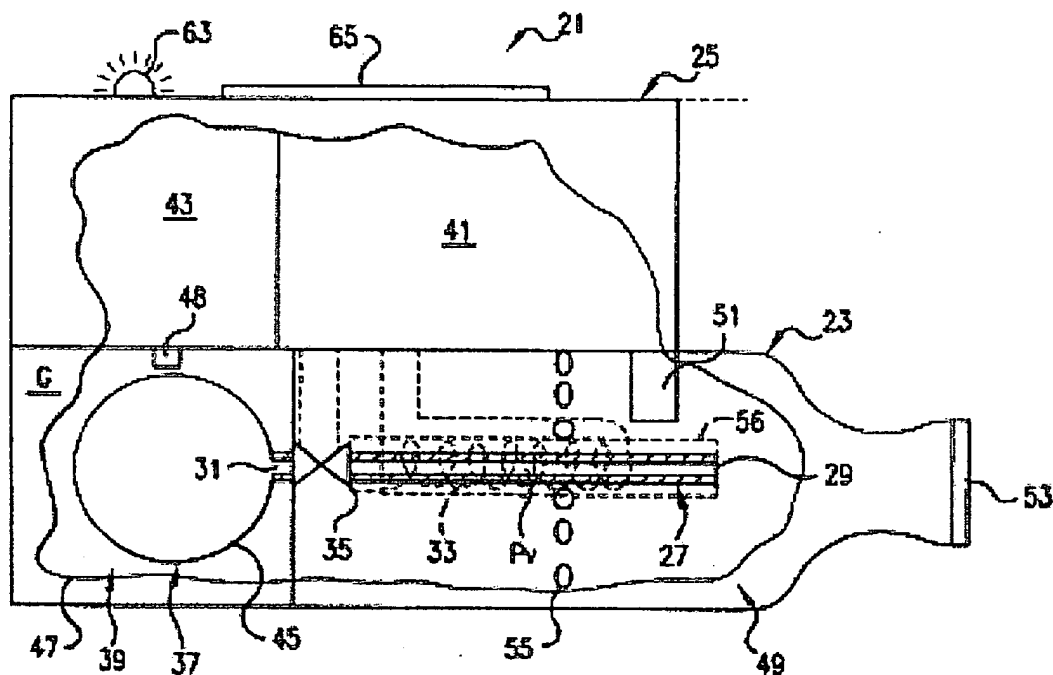
In the Office action, the Examiner indicates that claims 34, 38 and 39 would be allowable if rewritten in independent form to include the features of the base claim and any intervening claims. Claims 34, 38 and 39 have been rewritten in independent form.

Claims 1-4, 6-14, 19, 32, 33, and 35-37 stand rejected as being anticipated by U.S. Patent No. 6,234,167 to Cox, et al. ("Cox") under 35 U.S.C. § 102(b). Claim 5 stands rejected under 35 U.S.C. § 103(a) based on Cox in view of U.S. Patent No. 6,158,431 to Poole ("Poole"). Claim 21 stands rejected under 35 U.S.C. § 103(a) based on Cox.

In view of the foregoing amendments, and the following remarks, applicant respectfully requests reconsideration of the claims.

Rejections Based on Cox Under 35 U.S.C. § 102(b).

Cox does not anticipate claims 1-4, 6-14, 19, 32, 33, and 35-37 under 35 U.S.C. § 102(b) because it does not disclose each feature recited in the claims.



Cox et al. discloses an aerosol generator having a material contained in a flexible container 45, which is separated from a tube 27 by a valve 35. Pressurized gas G surrounding flexible container 45 causes the material contained therein to move into tube 27 when valve 35 is opened. Valve 35 opens in response to a signal from a controller 43. Controller 43 receives input signals of either airflow change from an airflow detecting device 51 or pressure drop from pressure sensing device 57 located at a first end 29 of tube 27. Further, a pressure sensor 48 is provided to sense the pressure of gas G for determining how long to keep valve 35 open to dispense the appropriate amount of material.

Claims 1-4, 6-14

Cox does not disclose each feature of the medicament ejector recited in claim 1.

Claim 1 recites:

A medicament dispenser, comprising:
a fluid medicament supply;
an ejector;
an accumulator in fluid communication with the ejector;
a valve in fluid communication with the fluid medicament supply and the accumulator, wherein the valve connects the fluid medicament supply with the accumulator;
a sensor configured to sense an accumulator characteristic; and
a controller configured to operate the valve in response to the accumulator characteristic.

Cox does not disclose a valve in fluid communication with the fluid medicament supply and the accumulator, wherein the valve connects the fluid medicament supply with the accumulator. The Examiner argues that source 37 of material in Cox is an accumulator, first component 23 of aerosol generator 21 is a fluid medicament supply, and valve 35 is in fluid communication with the fluid medicament supply 23 and the accumulator 37. Valve 35 of Cox connects source 37 (Examiner's accumulator) with tube 27. Valve 35 of Cox does **not** connect the fluid medicament supply 23 with the accumulator 37. Applicant's valve 28, in contrast to Cox, connects fluid medicament supply 24 with accumulator 30 (see Fig. 2 of Applicant's disclosure). Should the Examiner decide that source 37 is a fluid medicament supply (instead of an accumulator) and tube 27 is an accumulator instead of being a distribution tube, Cox would still not disclose each feature of the medicament ejector recited in claim 1. Cox does not disclose a sensor configured to sense an accumulator characteristic. Sensor 48 of Cox senses the pressure of Gas G in the chamber 47 (see column 5, lines 26-31)

Page 12 - RESPONSE TO OFFICE ACTION
Serial No. 10/777,448
HP Docket No. 200309247-1
KH Docket No. HPCC 3B1

and does not sense an accumulator characteristic (of accumulator 37 in Examiner's current argument or accumulator 27 in a possible future Examiner argument).

For at least these reasons, Cox does not disclose each feature of claim 1. Accordingly, it does not anticipate claim 1 under 35 U.S.C. § 102(b). Consequently, claims 2-4 and 6-14, depending from claim 1 and incorporating its elements therein, are likewise not anticipated by Cox for at least the reasons presented with respect to claim 1.

Claims 19 and 21

Cox does not disclose each feature of the medicament ejector recited in claim 1.

Claim 19 recites:

A method of dispensing a medicament using a medicament dispenser including a fluid medicament supply, an ejector, an accumulator in fluid communication with the ejector, a valve in fluid communication with the fluid medicament supply and the accumulator, wherein the valve connects the fluid medicament supply with the accumulator, a sensor configured to sense an accumulator characteristic, and a controller configured to operate the valve in response to the accumulator characteristic, the method comprising:

- sensing a medicament pressure within the accumulator;
- recharging the accumulator from the fluid medicament supply where recharging the accumulator includes opening a valve between the fluid medicament supply and the accumulator; and
- ejecting medicament from the accumulator.

Cox does not disclose a valve in fluid communication with the fluid medicament supply and the accumulator, wherein the valve connects the fluid medicament supply with the accumulator. The Examiner argues that source 37 of material in Cox is an accumulator, first component 23 of aerosol generator 21 is a fluid medicament supply, and valve 35 is in fluid communication with the fluid medicament supply 23 and the accumulator 37. Valve 35 of Cox connects source 37 (Examiner's accumulator) with

Page 13 - **RESPONSE TO OFFICE ACTION**
 Serial No. 10/777,448
 HP Docket No. 200309247-1
 KH Docket No. HPCC 3B1

tube 27. Valve 35 of Cox does **not** connect the fluid medicament supply 23 with the accumulator 37. Applicant's valve 28, in contrast to Cox, connects fluid medicament supply 24 with accumulator 30 (see Fig. 2 of Applicant's disclosure).

For at least these reasons, Cox does not disclose each feature of claim 19. Accordingly, it does not anticipate claim 19 under 35 U.S.C. § 102(b). Consequently, claim 21, depending from claim 19 and incorporating its elements therein, is likewise not anticipated by Cox for at least the reasons presented with respect to claim 19.

Claims 32, 33, 35-37

Cox does not disclose each feature of the medicament ejector recited in claim 1.

Claim 32 recites:

An inhaler, comprising:
a fluid medicament supply means;
an ejector means;
an accumulator means in fluid communication with the ejector means;
a valve means in fluid communication with the fluid medicament supply means and the accumulator means, wherein the valve connects the fluid medicament supply means with the accumulator means;
a sensing means configured to sense a characteristic of the accumulator means;
and
a controller means configured to operate the valve means in response to the sensed accumulator characteristic.

Cox does not disclose a valve in fluid communication with the fluid medicament supply means and the accumulator means, wherein the valve connects the fluid medicament supply means with the accumulator means. The Examiner argues that source 37 of material in Cox is an accumulator, first component 23 of aerosol generator 21 is a fluid medicament supply, and valve 35 is in fluid communication with the fluid medicament supply 23 and the accumulator 37. Valve 35 of Cox connects source 37

Page 14 - RESPONSE TO OFFICE ACTION
Serial No. 10/777,448
HP Docket No. 200309247-1
KH Docket No. HPCC 3B1

(Examiner's accumulator) with tube 27. Valve 35 of Cox does **not** connect the fluid medicament supply 23 with the accumulator 37. Applicant's valve 28, in contrast to Cox, connects fluid medicament supply 24 with accumulator 30 (see Fig. 2 of Applicant's disclosure).

For at least these reasons, Cox does not disclose each feature of claim 32. Accordingly, it does not anticipate claim 32 under 35 U.S.C. § 102(b). Consequently, claims 33 and 35-37, depending from claim 32 and incorporating its elements therein, are likewise not anticipated by Cox for at least the reasons presented with respect to claim 32.

Rejection Based on Cox in view of Poole under 35 U.S.C. § 103(a).

The Office Action rejected claim 5 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Cox in view of Poole. Applicant respectfully submits the claim in its present form is allowable over the cited art, and requests reconsideration of this rejection.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations (MPEP § 2142). In the present case, the references do not teach or suggest all of the claim limitations. Furthermore, there is not

a reasonable expectation of success to move the sensor of Cox to a location taught by Poole.

For at least the reasons presented above, Cox does not teach or suggest all of the claim limitations of claim 1. Therefore, as claim 5 is depending from claim 1, the features of Cox that the Examiner is relying upon do not teach or suggest all of the claim limitations of Applicant's claim 5.

Additionally, there is not a reasonable expectation of success to move the sensor of Cox to a location taught by Poole. Sensor 48 of Cox senses the pressure of Gas G in the chamber 47 (see column 5, lines 26-31). Moving sensor 48 to a location adjacent ejector 53, which would be outside of chamber 47, would make Cox's medicament dispenser inoperable as the sensor would no longer be able to sense the pressure of Gas G in the chamber 47 for determining how long to keep valve 35 open to dispense the appropriate amount of material to the ejector 53.

In absence of such disclosures, the cited references do not satisfy the most basic requirement for establishing a prima facie case of obviousness. Accordingly, claim 5 is allowable over the references.

Rejection Based Cox under 35 U.S.C. § 103(a).

The Office Action rejected claim 21 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Cox. Applicant respectfully submits the claim in its present form is allowable over the cited art, and requests reconsideration of this rejection.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations (MPEP § 2142). In the present case, the references do not teach or suggest all of the claim limitations.

For at least the reasons presented above, Cox does not teach or suggest all of the claim limitations of claim 19. Therefore, as claim 21 is depending from claim 19, the features of Cox that the Examiner is relying upon do not teach or suggest all of the claim limitations of Applicant's claim 21.

In absence of such disclosures, the cited reference does not satisfy the most basic requirement for establishing a *prima facie* case of obviousness. Accordingly, claim 21 is allowable over the reference.

Conclusion

Applicant believes that this application is now in condition for allowance, in view of the foregoing remarks. Accordingly, applicant respectfully requests that the Examiner issue a Notice of Allowability covering the pending claims. If the Examiner has any questions, or if a telephone interview would in any way advance prosecution of the application, please contact the undersigned attorney of record.

Respectfully submitted,

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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this correspondence is being facsimile transmitted to Examiner S. Ali, Group Art Unit 3771, Assistant Commissioner for Patents, at facsimile number (571) 273-8300 on December 7, 2007.



Christie A. Doolittle

Page 18 - RESPONSE TO OFFICE ACTION
Serial No. 10/777,448
HP Docket No. 200309247-1
KH Docket No. HPCC 3B1